

(2)(a) Notification of status of facilities for the advanced messaging service. When construction has been completed in accordance with each of the benchmarks established in the radio station authorization, the licensee shall so notify the Commission using Form 489.

(b) Extensions of time and reinstatement. When a licensee has not completed construction in accordance with the provisions of § 22.43(f) of this part, a timely application for extension of time (FCC Form 489) must be filed. Form 489 shall also be used for requests for reinstatements of authorizations if filed within 30 days after the authorization expired (§ 22.43(d)).

(c) If a Form 489 is not filed after completing construction or is filed but is not in accordance with the rules of this part the authorization will automatically expire.

(3) Permissive changes or minor modifications of authorization. The following changes do not require prior Commission authorization but merely notification. A Form 489 must be filed to notify of any permissive change and the licensee may commence service the day Form 489 is postmarked.

(a) Construction, operation, or deletion of base transmitter locations on the same frequency as allowed under § 22.117(d);

(b) Construction, operation, or deletion of base receiver locations on the same frequency as allowed under § 22.117(d), provided that a receiver may be activated without the filing of a Form 489 but such a receiver will not be accorded interference protection or considered in determining completion of construction unless a Form 489 is filed;

(c) Correction of coordinates of base transmitters or base receivers.

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§ 22.15 Technical content of applications.

(a) All applications required by this part shall contain all technical information required by the application form and any additional information

necessary to fully describe the proposed construction and to demonstrate compliance with all technical requirements of the rules governing the radio service involved (see Subparts C, F, G, H, I, J, ~~and K~~, K, and N as appropriate). The following paragraphs describe a number of general technical requirements.

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(1) . . .

. . .

(i) Applicants in the Advanced Messaging Service shall list the proposed sites necessary to meet the two year benchmarks listed in § 22.43(f).

. . .

(b) Each public land mobile service application for a radio station authorization for a new base station or a major modification to an existing base station, except applications in the advanced messaging service, shall make the following showings:

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(o) In the Advanced Messaging Service each application shall contain the information required in Subpart N of this part.

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§ 22.23 Amendment of applications. (See also §§ 22.918)

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(h) 800 MHz Air-Ground Radiotelephone Service and Advanced Messaging Service.

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(2) The proposed addition of base stations will be considered a minor amendment as long as the initial application proposed 50 ground stations, if the application is for the 800 MHz Air-Ground Services, or the initial

application proposed service in accordance with the 6 year benchmark in § 22.43(f), if the application is for the Advanced Messaging Service.

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PROCESSING OF APPLICATIONS

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§ 22.27 Public notice period.

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(b)(3) Applications in the Advanced Messaging Service shall be filed initially during a one-day period to be announced by publication in the Federal Register. After all initial applications have been either granted or dismissed, if any Advanced Messaging Service frequencies are then available the Commission shall announce by public notice a filing date for remaining frequencies. From this filing date forward, applications shall be processed on a daily first-come, first-served basis.

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§ 22.29 Ownership changes and agreements to amend or to dismiss applications or pleading.

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(c) The provisions of § 22.29 do not apply to the 800 MHz Air-Ground Radiotelephone Service or the Advanced Messaging Service.

§ 22.31 **Mutually exclusive applications.**

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(a) . . .

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(2) In the Advanced Messaging Service, applications will be considered mutually exclusive if:

(i) The applications request a nationwide channel in the Advanced Messaging Service and there are more applications filed in the initial one-day filing window (see § 22.27(b)(3)) than nationwide channels available in the Advanced Messaging Service as provided in § 22.1202.

(ii) The applications request a nationwide channel in the Advanced Messaging Service and there is more than one application filed on a particular day for an unlicensed channel available in the Advanced Messaging Service as provided in § 22.1202.

(iii) The applications request a regional channel in the same region in the Advanced Messaging Service and there are more applications filed in the initial one-day filing window (see § 22.27(b)(3)) than regional channels available in that region in the Advanced Messaging Service as provided in § 22.1202.

(iv) The applications request a regional channel in the same region in the Advanced Messaging Service and there is more than one application filed on a particular day for an unlicensed channel available for that region in the Advanced Messaging Service as provided in § 22.1202.

(v) The applications request a local channel for the same market in the Advanced Messaging Service and there are more applications filed in the initial one-day filing window (see § 22.27(b)(3)) than local channels available in that market in the Advanced Messaging Service as provided in § 22.1202.

(vi) The applications request a local channel for the same market in the Advanced Messaging Service and there is more than one application filed on a particular day for an unlicensed channel available for that market in the Advanced Messaging Service as provided in § 22.1202.

(b) . . .

. . .

(3) In the Advanced Messaging Service, an application only will be entitled to comparative consideration with one or more applications if the application is mutually exclusive with the other applications and the application is deemed to be acceptable for filing.

. . .

(i) During the initial filing window for frequencies in the Advanced Messaging Service, applicants may specify a frequency preference, but the Commission shall assign all frequencies. After the initial filing window, an applicant must select the frequency for which it is applying. In the event of mutually exclusive applications occurring in the Advanced Messaging Service during the initial filing window or more mutually exclusive applications are received for the Advanced Messaging Service on the same day after the initial filing window has opened and closed than frequencies remaining, a comparative hearing (see § 22.1217) will be held and the most qualified applicants selected from among all applications that have not been dismissed or otherwise found unacceptable. The most qualified applicants will be licensed from available frequencies.

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§ 22.32 Consideration of applications.

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(e) . . .

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(6) In the Advanced Messaging Service the application is entitled (under § 22.31) to comparative consideration with another application (or applications); in such cases the hearing shall conform to the comparative evaluation procedure described in § 22.1217.

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§ 22.40 Considerations involving transfer or assignment applications.

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(d) Advanced Messaging Service. Applications and authorizations for unconstructed facilities in this service may not be transferred or assigned (other than a *pro forma* transfer or assignment) or be the subject of any substantial changes in ownership unless the licensee demonstrates a lack of intent to speculate.

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§ 22.43 Period of construction.

. . .

(f) Advanced Messaging Service. Applicants may not preconstruct facilities in the Advanced Messaging Service.

(1) Nationwide licensees in the Advanced Messaging Service must establish service according to the following schedule after the grant of the initial authorization:

(i) In the following MSAs within 18 months

(A) New York, NY/Nassau-Suffolk, NY/Newark, NJ and Paterson-Clifton-Passaic, NJ;

(B) Los Angeles-Long Beach/Anaheim-Santa Ana-Garden Grove/Riverside Santa Bernadino-Ontario, CA;

(C) Chicago, IL;

(D) Philadelphia, PA;

(E) Detroit/Ann Arbor, MI;

(F) Boston-Lowell-Brockton-Lawrence Haverhill, MA;

(G) San Francisco-Oakland, CA;

(H) Washington, DC-MD-VA;

(I) Dallas-Fort Worth, TX; and,

(J) Houston, TX;

(ii) In 30 of the top 100 MSAs within 2 years;

(iii) In 60 of the top 100 MSAs within 4 years; and,

(iv) In all of the top 100 MSAs within 6 years;

(2) Regional licensees in the Advanced Messaging Service must establish service according to the following schedule after the grant of the initial authorization:

[To be determined].

(3) Local licensees in the Advanced Messaging Service must establish service according to the following schedule after the grant of the initial authorization:

[To be determined].

(4) For purposes of this rule, service is considered to be established if the licensee has provided reliable service area coverage (see § 22.1203) to 75 percent of the geographic area or population of the MSA.

(5) Failure to comply with any of the requirements of this section will cause the authorization to expire automatically and the authorization must be submitted to the Commission for cancellation.

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§ 22.45 License period.

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(d) Advanced Messaging Service. The license will terminate 10 years from the date of grant.

Subpart C--Technical Standards

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§ 22.110 Antenna polarization.

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(f) The provisions of § 22.110 do not apply to stations in the 800 MHz Air-Ground Radiotelephone Service or the Advanced Messaging Service.

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§ 22.117 Transmitters.

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(d) Advanced Messaging Service. A licensee in the Advanced Messaging Service may construct and operate additional base transmitters on its assigned frequency if the reliable service area of the proposed transmitter lies wholly within the licensee's authorized market area (whether nationwide, regional, or local) in accordance with the requirements of subsection (b) of this section, except that the licensee may construct additional base transmitters regardless of whether the additional base transmitter is within the existing reliable service area contour. Such authority is conditioned upon the licensee:

(i) obtaining marking and lighting specifications from the Commission Antenna Survey Branch before commencing construction;

(ii) if the construction will have a significant environmental impact under § 1.1307, filing and the Commission completing review of an Environmental Assessment, see § 1.1307, prior to commencing construction.

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§ 22.119 Limitation on use of transmitters for other services.

Transmitters licensed for operation in services governed by this part may not be concurrently licensed or used for non-common carrier communications purposes, unless the carrier is a Advanced Messaging Service licensee electing non-common carrier treatment under § 22.1201 of Subpart N. However, mobile units may be concurrently licensed or used for non-common carrier purposes provided that the transmitter is type-accepted for use in each service.

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Subpart D--Technical Operation

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§ 22.213 Station identification.

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(f) Licensees in the Advanced Messaging Service shall not be required to identify the station.

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Subpart N - Advanced Messaging Service

§ 22.1200 Scope.

This subpart sets out the regulations governing the licensing and operations of Advanced Messaging Service (AMS) systems authorized in the 930.0-931.0 MHz band. It includes eligibility requirements, application procedures, and operational and technical standards for AMS licensees. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflict, the provisions of this subpart shall govern.

§ 22.1201 Eligibility.

AMS authorizations will be issued to existing and proposed common carriers and non-common carriers. The applicant shall submit a statement indicating whether service will be provided on a common carrier or a non-common carrier basis. Notwithstanding the carrier's election of common carrier or non-common carrier status, applications will be granted only in cases where it can be shown that the applicant is legally, financially, technically and otherwise qualified to render the proposed service under this Part and the public interest, convenience and necessity would be served by a grant thereof.

§ 22.1202 Frequencies.

The following frequency assignments are available for AMS service in the market noted:

<u>Channel 1:</u>	<u>930.000-930.050</u>	<u>Nationwide</u>
<u>Channel 2:</u>	<u>930.050-930.100</u>	<u>Nationwide</u>
<u>Channel 3:</u>	<u>930.100-930.150</u>	<u>Nationwide</u>
<u>Channel 4:</u>	<u>930.150-930.200</u>	<u>Nationwide</u>
<u>Channel 5:</u>	<u>930.200-930.250</u>	<u>Nationwide</u>
<u>Channel 6:</u>	<u>930.250-930.300</u>	<u>Nationwide</u>
<u>Channel 7:</u>	<u>930.300-930.350</u>	<u>Regional</u>
<u>Channel 8:</u>	<u>930.350-930.400</u>	<u>Regional</u>
<u>Channel 9:</u>	<u>930.400-930.450</u>	<u>Regional</u>
<u>Channel 10:</u>	<u>930.450-930.500</u>	<u>Regional</u>
<u>Channel 11:</u>	<u>930.500-930.550</u>	<u>Regional</u>
<u>Channel 12:</u>	<u>930.550-930.600</u>	<u>Regional</u>
<u>Channel 13:</u>	<u>930.600-930.650</u>	<u>Regional</u>
<u>Channel 14:</u>	<u>930.650-930.700</u>	<u>Local</u>
<u>Channel 15:</u>	<u>930.700-930.750</u>	<u>Local</u>
<u>Channel 16:</u>	<u>930.750-930.800</u>	<u>Local</u>
<u>Channel 17:</u>	<u>930.800-930.850</u>	<u>Local</u>
<u>Channel 18:</u>	<u>930.850-930.900</u>	<u>Local</u>
<u>Channel 19:</u>	<u>930.900-930.950</u>	<u>Local</u>
<u>Channel 20:</u>	<u>930.950-931.000</u>	<u>Local</u>

Regional licenses are [To be defined]. Local channel assignments are available for each MSA and RSA, as defined in Part 22,900 et. seq. of the Commission's Rules. Multiple channels in the same region will not ordinarily be assigned to a single applicant, but may be made available upon a showing that the applicant requires

additional channels in order to achieve efficiencies that could not otherwise be achieved by two licensees operating on individual channels.

§ 22.1203 AMS reliable service area.

The reliable service area for base to user terminal AMS transmission is defined as the 43 dBu contour established using procedures consistent with § 22.504 and F.C.C. Report No. R-6406, "Technical Factors Affecting The Assignment of Facilities In The Public Mobile Service," by Roger B. Carey. Standards and procedures presently applied to stations in the 450-470 MHz band should be used. In cases where the applicant believes that Report No. R-6406 does not accurately depict the realistic 43 dBu service contour(s) of the base station(s) proposed, the applicant may submit for the Commission's consideration alternative propagation studies in addition to the above required studies. All supporting data and calculations must be included with the results of the studies.

§ 22.1204 Height-power limitations.

Stations in this service shall not be permitted to exceed the effective radiated power indicated below:

	↓	<u>Watts</u>
		<u>(ERP)</u>
	↓	
<u>Base stations</u>	↓	<u>3500</u>
<u>User terminals</u>	↓	<u>7</u>

§ 22.1205 Types of emissions and modulation requirements.

[To be determined.]

§ 22.1206 Emission requirements.

Licensees in the AMS service are required to employ means to attenuate spurious signals from transmitters in the advanced messaging service:

(a) For base station transmitters operating at more than [To be determined] watts ERP:

(i) For any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 17.5 kHz up to and including 22.5 kHz: at least $83 \log_{10}((f_d - 12.5 \text{ kHz})/5)$ decibels;

(ii) For any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 22.5 kHz up to and including 75 kHz: at least $116 \log_{10}((f_d - 12.5 \text{ kHz})/6.1)$ decibels or $50 + 10 \log_{10}(P)$ decibels or 70 decibels, whichever is the lesser attenuation;

(iii) For any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 75 kHz: at least $43 + 10 \log_{10}(P)$ decibels or 80 dB, whichever is the lesser attenuation.

(b) [Emissions mask for low powered services to be determined].

§ 22.1207 Transmitter construction and installation.

The equipment at the operating and transmitting positions shall be so installed and protected that it is not accessible to, or capable of being operated by, persons other than those duly authorized by the licensee. In general each transmitter used in the AMS service shall be so constructed or installed that all controls thereon which may cause off-frequency operation or result in any unauthorized emission shall be protected from access by other than a technically qualified person.

§ 22.1208 Control point.

(a) Each AMS system is required to have:

(i) At least one control point.

(ii) A person on duty at the control point who is in charge of system operation during the normal rendition of service.

(b) At each control point, facilities which will permit the operator to turn off base station transmitters shall be installed.

§ 22.1209 Station identification.

AMS base stations and user terminals shall not be required to transmit identifying call signs.

§ 22.1210 Permissible communications.

(a) AMS user terminals in this service are authorized to communicate with and through base stations only. Such communications between base stations and user terminals shall be upon the frequency in § 22.1202 authorized to the base station licensee.

(b) Base stations in this service are authorized only to render service to associated subscribers or customers.

(c) Notwithstanding paragraphs (a) and (b) above, licensees also are permitted to utilize AMS user terminals and base stations to render incidental communications services to the licensee and to perform any tests necessary for the provision of AMS service.

(d) All general two-way digital communications are permitted on AMS frequencies.

§ 22.1211 Responsibility for operational control and maintenance of mobile stations.

An AMS licensee shall be responsible for exercising effective operational control over all user terminals with which the AMS system communicates. The proper installation, maintenance and repair of such user terminals shall normally be the responsibility of the AMS licensee except that customer provided equipment shall be the responsibility of the customer.

§ 22.1212 Ownership interests in multiple applications to provide AMS service.

(a) No party may have an ownership interest, direct or indirect, in more than one mutually exclusive application for AMS service, except that (i) interests of less than one percent will not be considered, (ii) interests of less than five percent in publicly traded corporate applicants will not be considered, (iii) passive interests of less than ten percent will not be considered, if the applicant submits an affidavit stating that no

passive investor has attempted to exert any influence or control over the officers of the applicant.

(b) Attribution of ownership interests in a publicly traded corporate applicant for AMS service that is held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and the application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50 percent, it shall not be included for purposes of this multiplication (i.e., interests over 50 percent are counted as interests of 100 percent).

§ 22.1213 Content and form of AMS applications.

(a) AMS applications must be filed on FCC Form 401. The first page of the application after the cover shall be a table of contents listing the exhibits contained in the application, followed by a certification, see § 22.1213(b)(2). The following exhibits must be submitted with the application, numbered as follows:

(1) Exhibit I - Full sized maps for each MSA for which service is proposed. This map must be on a scale of 1:250,000. The map must have a legend, scale, latitude and longitude. This map must be clear, legible and have base transmitter and receiver sites specifically plotted. It must depict with clear labelling, the base transmitter reliable service contours, base transmitters and the MSA boundaries visibly marked on the map. Regardless of the scale used to satisfy the requirements for the reduced map in Exhibit II, the 1:250,000 scale map must always be used to satisfy the requirements of Exhibit I.

(2) Exhibit II - 8 and 1/2 by 11 inch reduced 1:250,000 scale maps of each MSA proposed to be served. If it is impractical to depict the entire MSA on the map with a scale of 1:250,000, applicants may use a map with a scale of 1:500,000 or similar scale. The entire MSA must be depicted, clearly labeled, with the boundaries visibly marked and the map must show base transmitter sites and the base transmitter reliable service contours.

(3) Exhibit III - An exhibit containing independently prepared engineering data and calculations used to derive the service contours shown. See § 22.1203. For purposes of this rule, "independently prepared" shall mean an engineering exhibit prepared by, or for, the sole use of the applicant.

(4) Exhibit IV - An exhibit detailing base to user terminal and user terminal to base transmission networks, if applicable to the service category. This exhibit should describe modulation techniques, signaling protocols, and contain estimates of traffic throughput and system capacity. The exhibit should provide sufficient information to enable a determination as to the spectral efficiency of the system.

(5) Exhibit V - Ownership information in accordance with Section 22.13(a)(1). In addition, individual applicants holding less than a 1 percent interest in another applicant or less than a 5 percent interest in a publicly held corporation that has or will file a mutually exclusive application must disclose the fact that the corporation and the applicant both have filed mutually exclusive applications. This disclosure must include the applicant's percentage interest held in the company.

(6) Exhibit VI - An Exhibit setting forth how the proposal complies with the Commission's advanced messaging service design concepts, and indicating the applicant's projected method for coordinated expansion of the system in response to changing demand. The exhibit should also detail what the applicant considers to be the proposed service's enhancement over existing services.

(7) Exhibit VII - An indication of the basis which the applicant will use to determine whether sufficient congestion exists to warrant system expansion.

(8) Exhibit VIII - Full particulars regarding the cost of construction and other expenses of the proposed facilities through the 2 year benchmark in § 22.43(f) and demonstration of how the applicant intends to finance construction and other initial expenses and operation for two years. See Section 22.1218.

(9) Exhibit IX - A detailed description of the user interface to be provided, including any particulars on interconnection with the public landline switched telephone network.

(10) Exhibit X - An exhibit indicating whether a grant of the application may have a significant environmental effect under § 1.1307, in which case the applicant must submit an Environmental Assessment, see § 1.1311, and Commission environmental review must be completed prior to the construction of facilities. See § 1.1312.

(11) Exhibit XI - An exhibit detailing the applicant's experience with the construction and operation of radio systems.

(12) Exhibit XII - An exhibit describing any actual experimentation conducted by the applicant to validate the transmission technologies and protocols to be used in the proposed AMS system.

(13) Exhibit XIII - An exhibit detailing the applicant's proposed plan for offering service to the public, including service proposals, customer service plans, and any actual experience with the offering of services to the public.

(b) Applications shall be filed as set forth below:

(1) An original and one paper copy of the application which must be enclosed in stiff covers and fastened securely along the left edge without exposed sharp edges (looseleaf binders, plastic binding strip, covered metal clasps) along with three microfiche copies in accordance with the requirements of Section 22.6(d), including appropriate filing fees, must be filed at the Strip Commerce Center Facility in Pittsburgh, Pennsylvania.

(2)(i) The transmittal sheet will include a certification. All applicants must certify to the following in their applications:

I hereby certify, under penalty of perjury, that this application for an AMS authorization is complete in every respect and contains substantially all of the information required by FCC Form 401 and the Commission's AMS application rules. I acknowledge that, if upon Commission inspection, this certification is shown to be incorrect, this application shall be dismissed without further consideration.

I also certify that [name of applicant] is the real party in interest in this application and there are no agreements or understandings, other than those specified in this application, which provide that someone other than the applicant shall hold an indirect or direct ownership interest in the applicant or control over the applicant. It is also certified that the applicant intends to construct and operate the station as proposed and that there are no agreements or understandings that are inconsistent with that intent.

Executed on _____
Applicant Signature _____
Print name _____
Title _____

(ii) The certification must be signed in ink. No mechanical reproductions of signatures may be used. The certification must be dated and signed in accordance with the requirements of Section 1.743 of the Rules. The title of the person signing the certification must be stated. In the case of a corporate applicant, the person signing the certification must be an officer of the corporation.

(3) The application, the filing fee, and the microfiche envelope shall be placed in a sealed envelope. The applicant's name must be prominently displayed in the lower left hand corner of the envelope for all applications sent by mail and placed in the center of the envelope for applications delivered to the Strip Commerce Center Facility, at Pittsburgh, Pennsylvania.

(4) Notification to the FAA, if necessary, must be undertaken at the time a license is granted or 45 days after the application has appeared on public notice as acceptable for filing if no mutually exclusive application is filed.

§ 22.1214 Provision of service to subscribers.

Subscriptions to AMS service shall be afforded to the public in chronological order of filing of request for service for all common carriers licensed under this Subpart, except under emergency conditions. Prospective subscribers shall be informed of the area in which reliable service can be expected. If a licensee, whether common carrier or private carrier, turns away a request for service due to lack of capacity it shall report that fact to the Commission and indicate how it plans to remedy the lack of capacity. Licensees electing to operate as private carriers shall enter into agreements with subscribers. Copies of such agreements shall be filed with the Commission if requested by the Commission.

§ 22.1215 Processing of AMS applications.

Applications for facilities to operate on the frequencies governed by this subpart will be processed as follows:

(a) All applications will first be considered to determine whether they are substantially complete and acceptable for filing. If so, they will be assigned a file number and put in pending status. If not, they will be returned to the applicant.

- (b) Except as otherwise provided in this section, all applications in pending status will be processed in the order in which they are received, determined by the time and date on which the application was received by the Commission.
- (c) Each application will then be reviewed to determine whether it can be granted.
- (d) An application which is dismissed will lose its place in the processing line.
- (e) If an application is returned for correction and resubmitted and received by the Commission within 30 days from the date on which it was returned to the applicant, it will retain its place in the processing line. If it is not received within 30 days, it will lose its place in the processing line.
- (f) AMS applications will only be acceptable for filing if they are received by the Commission prior to the applicable cut-off established by the Commission except as provided for in § 22.27(b)(3).

§ 22.1216 Comparative evaluation of AMS applications.

- (a) If no more mutually exclusive applications are filed in the initial filing window or if no more mutually exclusive applications are filed on a given day after the initial application window than AMS frequencies available for assignment that conform with all applicable rule requirements, the Commission will grant each application without a hearing if such a grant would serve the public interest, convenience or necessity.
- (b) If more mutually exclusive applications are received than frequencies available for assignment, the Commission will conduct a comparative hearing among all of the applicants in a manner consistent with subparagraph (d) below to determine which applications to grant consistent with the public interest, convenience and necessity. The criteria that shall be considered in determining which applications should be granted include, but are not limited to:
 - (1) the number of MSAs in which service will be provided and their populations;
 - (2) the geographic area of coverage and population covered;
 - (3) the number of base stations to be constructed;

- (4) the number of user terminals to be served;
- (5) the spectral efficiency of the system architecture and technologies which the system will utilize;
- (6) the amount of developmental effort and experimental verification the applicant has undertaken to validate the proposed systems;
- (7) the applicant's experience in operating wide area communications systems;
- (8) the extent of the enhancement proposed over existing services; and,
- (9) the ability of the applicant to offer needed services to the public, as evidenced by the applicant's service proposals, customer service plans, and prior experience in rendering service to the public.

(c) AMS channels unassigned after the initial cut-off date will be assigned on a first-come, first-served basis to applicants meeting the criteria of subsection (b).

(d) *Comparative Procedures.* Comparative procedures to evaluate mutually exclusive AMS applications will be conducted according to the following procedure.

(1) *Acceptance for Filing.* The Commission shall issue a Public Notice listing all mutually exclusive applications accepted for filing for a particular AMS service category.

(i) *Petitions to Deny.* Petitions to Deny applications will be due thirty days after applications are placed on public notice as accepted for filing.

(ii) *Consolidated Reply to Petitions to Deny.* A consolidated reply to petitions to deny filed against an application will be due fifteen days after petitions to deny are filed.

(iii) *Other Pleadings.* Other pleadings will not be accepted absent a showing of good cause.

(2) *Hearing Designation Order.* After receiving petitions to deny and consolidated replies, the Commission will issue a hearing designation order (HDO) specifying issues to be considered in the comparative hearing and designating an administrative law judge.

(i) *Notice of Appearance.* Within twenty days of publication of the HDO, parties will be required to file Notices of Appearance. See 47 C.F.R. § 1.221(c).

(ii) *Hearing Fee.* Within twenty days of publication of the HDO, parties will be required to submit the hearing fee, as specified in 47 C.F.R. § 1.1105.

(3) *Discovery.* In order to expedite comparative hearings for mutually exclusive AMS applications, discovery ordinarily will be limited as described below.

(i) *Document Requests.* All applicants designated for hearing will be required to file requests for production of documents within 10 days of publication of the HDO.

(ii) *Response to Document Requests.* All applicants served with a document production request, within 40 days of the publication of the HDO, shall produce all documents responsive to a request, request a protective order, or assert a privilege.

(iii) *Additional Document Requests.* Ordinarily additional documents requests will not be granted. Upon good cause shown, however, the ALJ may grant requests for additional document production. Motions requesting additional document production must be filed within fifty days of the publication of the HDO.

(iv) *Motions to Compel.* Motions to compel filed in response to a claimed privilege with respect to a document production must be filed within sixty days of the publication of the HDO.

(v) *The ALJ ordinarily will be expected to rule on motions to compel and motions for additional discovery within twenty days of the filing of the motion.*

(4) *Motions to Enlarge Issues.* Although motions to enlarge issues will ordinarily not be accepted, in extraordinary cases the ALJ may, in

his discretion, add issues against an application upon the motion of another party or upon his own motion. Any motion to enlarge issues must show good cause and must be filed within 90 days of publication of the HDO.

(5) *Direct Case.* Parties will file their direct case, containing all exhibits the applicant intends to rely upon, within 30 days of the close of all discovery.

(6) *Rebuttal case.* Parties will file rebuttal cases within 45 days of the filing of parties' direct cases.

(7) *Hearing.* The ALJ will conduct a hearing or hearings to admit evidence into the record in the comparative proceeding. Ordinarily oral cross-examination will not be permitted. Upon the motion of any party or upon the motion of the ALJ, witnesses may be subjected to cross-examination. After all evidence has been received into the record, the ALJ will close the record and establish a schedule for the filing of proposed findings of fact and conclusions of law. Proposed findings shall ordinary be expected to be filed within 45 days of the close of the record.

(8) *Initial Decision.* Within 60 days of the filing of proposed findings of fact and conclusions of law, the ALJ shall issue an initial decision ranking applications and making individual determinations as to each applicant's legal, technical, and financial qualifications for licensing in the AMS service. Licenses will be issued to all qualified applicants in the order of the ALJ's ranking until no frequencies or qualified applicants remain. All other applications will be dismissed.

(9) *Appeal of the Initial Decision.* Petitions for review of the ALJ's initial decision shall be filed within 30 days of the publication of the initial decision. Petitions for review will be acted upon by the Commission rather than the Review Board.

§ 22.1217 *Demonstration of financial qualifications.*

Applicants will be required to demonstrate their financial ability by showing sufficient net liquid assets to meet realistic:

(a) Estimated costs of the proposed construction and other initial expenses associated with meeting all benchmarks up to and including the two year benchmark detailed in § 22.43(f);

(b) Estimated operating expenses for two years;

(c) Estimated research and development expenses for any new technologies the applicant proposes to utilize.

For purposes of this section, applicants are not entitled to rely upon estimated revenues derived in the first two years of operation.